

ALAN M. NELSON

ATTORNEY AT LAW

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October 7, 2013

Hon. Colleen McMahon
United States District Judge
United States Courthouse
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Wesley McMillan
Criminal Docket No. 13 Cr. 455(CM)

Dear Judge McMahon:

Please accept this correspondence as a request pursuant to Fed. Rule Crim. Pro. 32(b)(1)(A) and Title 18 U.S.C. sections 3552(c) and 4247(c) requesting that the Court Order an out-patient psychiatric and/or psychological examination of WesleyMcMillan to assist in the sentencing of the defendant.

Based upon discussions with Mr. McMillan, who is presently 70 years of age, I have been advised that he was diagnosed with "Panic Disorder" and "Acute Claustrophobia " as a young man. More significantly, it appears that Mr. Alcindor suffered from this disorder throughout his adult life, including the time of the instant offense. While initially detained in the Metropolitan Detention Center following his arrest, Mr. NcMillian required medical attention occasioned a s a collateral consequence of the acute stress his imprisonment occasioned due to this previously documented mental health disorder.

Mr. McMillan is 70 year sof age. This arrest represents his first contact with the criminal justice system. It is respectfully submitted that in light of Mr. McMillan's prior diagnosis, age and lack of criminal history a full forensic mental health evaluation will an important tool for the court to consider in imposing a sentence sufficient but not greater than necessary to satisfy the sentencing goals enunciated in title 18 U.S.C. §3553.

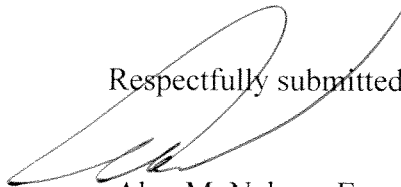
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Pursuant to U.S.S.G. 5H1.1, 5H1.3, U.S. v. Koon, 116 S.Ct. 2035 (1996), and 18 U.S.C. §3553(a) a departure and/or variance below the applicable guideline range may be warranted to reflect the extent to which Mr. McMillan's mental health status, combined with his age and lack of criminal history contributed to his engaging in the conduct which constitutes the underlying basis for his participating in the instant offense and more importantly, in determining the appropriate sentence to impose.

I have consulted with Dr. Eric Goldsmith, who is the Supervisor of the NYU School of Medicine's Forensic Psychiatry Residency Program, who has been qualified before this court on numerous occasions as an expert in forensic psychiatry and approved for compensation pursuant to the Criminal Justice Act. His CV is annexed hereto. He has advised me that he will accept compensation at the reduced hourly rate of \$300 and anticipates that a maximum time expenditure for review of Mr. McMillan's prior records, client interview and preparation of a forensic report will be 20 hours.

Accordingly, it is requested that the Court enter an order for the out-patient psychiatric evaluation of Mr. McMillan to assist it determining whether and to what extent the mental condition of Mr. McMillan should affect the sentence imposed upon him.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alan M. Nelson', is written over the typed name below.

Alan M. Nelson, Esq.

enclosure
AMN:jeg

cc: Wesley McMillan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

13 Cr 455(CM)

WESLEY McMILLAN,

ORDER AUTHORIZING APPOINTMENT
OF A PSYCHIATRIST PURSUANT
TO THE CRIMINAL JUSTICE ACT

Defendant

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Upon the application of the defendant, WESLEY McMILLAN, by his attorney, Alan M. Nelson, Esq., pursuant to 18 USC, Sec. 3006 A, subd. (e), and upon finding that the interest of justice would be served thereby, it is hereby

ORDERED, that defendant's assigned attorney, Alan M. Nelson, is authorized to obtain the service of ERIC GOLDSMITH, M.D., to examine and evaluate the defendant, WESLEY McMILLAN and prepare an evaluative report concerning same and it is further

ORDERED that the reasonable and proper expenses for the examination of the defendant by the doctor as aforesaid shall be paid out of the funds provided for these purposes under the Criminal Justice Act at the hourly rate of \$300.00 for a maximum of 20 hours with a ceiling for services fixed at \$6,000.00.

Dated: New York, New York
October , 2013

SO ORDERED:

HONORABLE COLLEEN McMAHON U.S.D.J.

Eric Goldsmith, M.D., LLC
420 Madison Avenue
Suite 801
New York, NY 10017

Tele: 212-486-2754
eric.goldsmith@gmail.com

Fax: 212-486-2758

ERIC GOLDSMITH, M.D.

MEDICAL TRAINING:

July 1991 – June 1992 Fellowship in Psychiatry and the Law, New York University School of Medicine
July 1988 – June 1991 Residency in Psychiatry, Mount Sinai Medical Center
July 1987 – June 1988 Internship in Internal Medicine, Lenox Hill Hospital

EDUCATION:

1987 S.U.N.Y. Health Science Center at Syracuse, College of Medicine, M.D.
1983 University of Pennsylvania, Philadelphia, Pennsylvania, B.A., Magna Cum Laude

CERTIFICATION AND LICENSURE:

1996 American Board of Psychiatry and Neurology, Certification in the Subspecialty of Forensic Psychiatry, Certificate No. 335, April 1996-December 2006 & April 2010-December 2020
1992 American Board of Psychiatry and Neurology, Diplomate in Psychiatry Certificate No. 036169
1989 New York State License No. 176973-1, Date of Expiration: 4/30/2015

APPOINTMENTS:

2005 - 2007 President, American Academy of Psychiatry and the Law, Tri-State Chapter
2002- 2004 Vice-President, American Academy of Psychiatry and the Law, Tri-State Chapter
1996-Present Clinical Assistant Professor of Psychiatry, New York University School of Medicine

2005-Present	Supervisor of Private Practice Rotation, New York University School of Medicine, Forensic Psychiatry Residency Program
1993 - 1998	Co-Director, Fellowship in Psychiatry and the Law, New York University School of Medicine
2000 – 2002	Councilor, American Academy of Psychiatry and the Law, Tri-State Chapter
1992 – 1996	Clinical Instructor in Psychiatry, New York University School of Medicine
1995 – 1997	Member of Voluntary Psychiatry Staff, Lenox Hill Hospital

EXPERIENCE:

1994-Present	Private Practice in Adult Psychiatry Psychiatric Evaluation and Treatment, Psychopharmacology, Psychotherapy, Forensic Psychiatry
1999-Present	Consulting Forensic Psychiatrist, Physicians for Human Rights Pro bono evaluations of torture victims who make applications for political asylum
1999 - 2001	Bellevue Hospital Center/ New York City Forensic Psychiatry Court Clinic, 100 Center Street, Forensic Psychiatry Evaluator
1994 - 1998	Director of Clinical Services Kirby Forensic Psychiatric Center Wards Island, New York
1998 – 1999	Forensic Coordinator, Kirby Forensic
1992 - 1994	Attending Psychiatrist, Kirby Forensic Psychiatric Center

PRESENTATIONS:

2011	American Academy of Psychiatry and the Law, Tri-State Chapter, <i>Death Penalty Mitigation</i> , Program Chairperson, San Juan Puerto Rico
2010	American Academy of Psychiatry and the Law, Tri-State Chapter, <i>Evaluation of "Mental Abnormality" in the Risk Assessment of Sex Offenders</i> , Program Chairperson, San Juan, Puerto Rico
2009	American Academy of Psychiatry and the Law, Tri-State Chapter, <i>Evaluation and Treatment of Sex Offenders</i> , Program Chairperson, San Juan, Puerto Rico
2003	American Psychiatric Association, 2003 Annual Meeting, Symposium 95, <i>Competency in a Defendant who Claims Amnesia</i>
2002	American Academy of Psychiatry and the Law, Tri-State Chapter, 2002 Annual

Meeting, Program Chairperson

- 2001-Present American Academy of Psychiatry and the Law, Tri-State Chapter, *Peer Review of Forensic Evaluations: Civil & Criminal*, Program Chairperson
- 2001 American Academy of Psychiatry and the Law, Tri-State Chapter 2001 Annual Meeting, Assistant Program Chairperson
- 1998 New York State Association of Criminal Defense Lawyers: Continuing Legal Education, *Madness In The Law: Mental Disease, DWI, Federal Sentencing Guidelines: The Mentally Ill Client: Connecting the Legal and Medical Dots*
- 1996 New York State Office of Mental Health: Research Conference, Plenary Session *Malingered Psychosis*
- 1996 New York State Bar Association, Labor and Employment Law Section: Fall Meeting, Plenary Session: *Dealing with a Potentially Violent Employee*
- 1995 Kirby Forensic Psychiatric Center Annual Forensic Workshop: *Clinical Issues in Assessing, Monitoring and Treating Patients at Risk for Violence*
- 1994 Kirby Forensic Psychiatric Center Annual Forensic Workshop: *Competencies - Legal and Clinical Issues Facing Mental Health Providers in Inpatient Settings*
- 1994 New York Academy of Medicine, *Can Society Survive Crime and Violence*

STATE COMMITTEES:

- 1995 New York State Office of Mental Health, New York City Region: Chair, Work on Identifying High Risk Patients for Dangerousness
- 1994 - 1995 New York State Office of Mental Health: Work Group on Recipient/Employee Relations

TEACHING EXPERIENCE:

- 2009 *Workshop on Treatment and Evaluation of Sex Offenders*, American Academy of Psychiatry and the Law, Tri-State Chapter, San Juan, Puerto Rico
- 2001-Present *Peer Review Case Presentations Program Chairperson*, American Academy of Psychiatry and the Law, San Juan, Puerto Rico
- 1993-Present Present Lecturer to Critical Issues in American Psychiatry & the Law Forensic Course: *Dissociative Disorders and Forensic Psychiatry, Right to Refuse Treatment, The Insanity Defense, Competency to Stand Trial and Waive Miranda Rights*

PROFESSIONAL ORGANIZATIONS:

1986 – Present	Member, American Psychiatric Association
1991 - Present	Member, American Academy of Psychiatry and the Law
2011 - Present	Member, Association for the Treatment of Sexual Abusers

TESTIMONIAL EXPERIENCE:

1991-Present	Qualified as an Expert in Psychiatry by the New York State Supreme Court, Connecticut State Court, and Federal Court, Southern and Eastern Districts of NY
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PUBLICATIONS: Peer – Review Journal Articles

Fisher, W. and Goldsmith, E. (1999). Principles Underlying a Model Policy on Relationships Between Staff and Services Recipients in a Mental Health System. Psychiatric Services, 50 (11), 1447-1452